

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, CAMP AT NAGPUR

ORIGINAL APPLICATION No.2022/1018

Dated this Friday the 5th October, 2018

CORAM: HON'BLE SMT. RAVINDER KAUR, MEMBER (J)

Shri Laxman Ganpatrao Panchal,
IFS (Retired)
Age about of 64 years and 1 Month,
Indian Citizen,
Son of Late Ganpatrao Panchal,
and now at : House No.1-15-51/1,
Geeta Nagar, Nanded - 431 605
Maharashtra.

... Applicant

(By Advocate Shri A. Mardikar)

VERSUS

1. The State of Maharashtra
Through Secretary (Forests)
Government of Maharashtra
Mantralaya Mumbai - 32.
2. Principal Chief Conservator
of Forests (Head of Forest Force),
Government of Maharashtra,
Van Bhawan, Civil Lines,
Nagpur - 44001.
3. Deputy Director (Social Forestry)
Government of Maharashtra,
Hingoli,
District Hingoli. **... Respondents**

**(By Advocate Shri R.D. Damle,
proxy counsel for Shri R.G. Agrawal)**

O R D E R

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8(a) to allow this O.A.

(b) To direct the Respondent No.1 to pay the interest @18% per annum on aforesaid amount of pension, Gratuity / Death-cum-retirement gratuity, commutation of pension and retirement benefits of applicant.

(c) To hold and direct that on delayed of pension, arrears and other retirement benefits, due to the applicant, an interest of 18% annually be paid to the applicant.

(d) Exemplary cost be imposed on the Respondents.

(e) To pass any such order, which this Hon'ble Tribunal think and deems fit, under facts and circumstances of the case.”

2. The brief facts necessary for the disposal of the present OA are that the applicant was posted as Deputy Conservator of Forest in the year 2007 and an FIR was lodged on 10.03.2010 against him with the allegations of certain irregularities in the recruitment of staff belonging to Group 'C' category, consequently, he was suspended vide order dated 26.03.2010 and suspension was with effect from 19.03.2010.

3. So far the FIR lodged against the applicant is concerned, the sanction to prosecute the applicant was declined by the Ministry of Environment, Forests and Climate Change, Vigilance Department vide letter dated 24.08.2015 since the applicant had already retired and there was no need for sanction under Section 19 of the Prevention of Corruption Act, 1988. Besides, an observation was made that there was no evidence against the applicant about his direct nexus, except lack of supervision. In the said letter, it was mentioned that proceedings for imposition of major penalty upon the applicant should be initiated under the relevant Rules.

4. The applicant preferred an OA No.495/2010 before the Central Administrative Tribunal, Bombay Bench, Mumbai which was allowed vide order dated 19.11.2010 (*Annexure A-3*) whereby the respondent No.1 was directed to reinstate the applicant forthwith with all consequential benefits.

5. It is the claim of the applicant that he retired on 30.09.2013 and till that time no disciplinary enquiry was instituted nor any

charge sheet was issued to him under All India Service (Discipline & Appeal) Rules, 1969. At the same time, no charge sheet was filed against the applicant in the criminal case. It is submitted that till the date of retirement of the applicant on 30.09.2013, no disciplinary enquiry was instituted or charge sheet issued to the applicant under All India Service (Discipline & Appeal) Rules, 1969. No charge sheet was also filed against him in the criminal case.

6. It is alleged that despite his retirement on 30.09.2013 and submission of pension papers well before his retirement, the pension of the applicant was withheld by the respondent No.1 and even provisional pension was not granted to him on time. It is only on 16.12.2016, the pension order was issued in favour of the applicant and, accordingly, he started getting regular pension from the month of January, 2017. All the previous pension benefits from April, 2014 to December, 2016 were not released in his favour by respondent No.3. Later on, the pension from the month of April, 2014 to December, 2016 was given to the applicant on 11.08.2017 i.e.

after about 3 years of his retirement.

7. As per the application, the GPF withdrawal on retirement, disbursement for leave encashment of accumulated 300 days Earned Leave and payment of Group Insurance Scheme was made with delay of more than 8 months from the date of retirement of the applicant. The applicant has further claimed that payment of amount of pay and allowances for the period of suspension w.e.f. 19.03.2010 to 16.06.2010 in terms of order dated 03.09.2016 issued by respondent No.1 was again given to the applicant with the delay of two months. The payment of Gratuity was delayed by a period of more than three years as the payment was made to him on 21.01.2017. It is submitted that withholding of retiral benefits and not releasing pension even after retirement of an employee without any justifiable reason is illegal and arbitrary. Hence this OA has been filed.

8. The OA has been contested by the respondents and detailed reply has been filed wherein it is claimed that due to proposed criminal proceedings against the applicant, his pension case was not submitted to the Accountant

General - II, Nagpur upto 24.11.2016. It is admitted that the applicant retired from the service on 30.09.2013. It is also admitted that as per the direction given by Ministry of Environment, Forests and Climate Change, Government of India vide letter dated 24.08.2015, the proceedings for imposition of major penalty against the applicant could not be initiated as per Rule 6(1)(b)(ii) of All India Services (Death-cum-retirement benefits) Rules, 1958 and consequently directions were issued by the Ministry of Environment, Forests and Climate Change, Government of India to take necessary action for finalisation of the pension. It is also admitted that the applicant's suspension period from 19.03.2010 to 16.06.2010 was treated as period spent on duty vide order dated 03.09.2016 issued by the respondent No.1 and hence the applicant is entitled to receive 100% pay and allowances. It is submitted that all the admissible retirement benefits, payment and other allowances have been paid timely and the OA is thus liable to be dismissed.

9. I have heard Shri A. Mardikar, learned counsel for the applicant and Shri R.D. Damle,

proxy counsel for Shri R.G. Agrawal, learned counsel for the respondents at length. I have gone through the materials available on record carefully.

10. Learned counsel for the respondents submitted that after the completion of investigation in the criminal case registered against the applicant under Section 13(1)(d) read with section 13(2) 15 of PC Act, 1988 and under relevant sections of IPC, the Government of Ministry did not accord sanction for his prosecution as he had already retired and thus no sanction was required under Section 19 of the Prevention of Corruption Act, 1988. It was also observed that there was no evidence of deliberate inaction on the part of the applicant but his conduct was unbecoming of a Government servant and lack of devotion of duty and consequently directions were issued by the Ministry of Environment, Forests and Climate Change, Government of India vide letter dated 24.08.2015 (Annexure A-2) for initiating proceeding for imposing major penalty upon the applicant. However, later on vide letter dated 11.02.2016, by Chief Conservator of Forests

(Mantralaya), it was observed that in view of Rule 6(1)(b)(ii) of AIS (DSRB) Rule, 1958 it would not be appropriate to initiate action against the applicant as per the provision of AIS(DSRB) Rule, 1958. It is submitted that the delay in giving the retiral benefits to the applicant was on account of all these proceedings.

11. I have carefully gone through Rule 6 which deals with recovery from pension. Therefore, from the very words 'recovery from pension' it would be evident that the said para 6 deals with pension in respect of withholding of the pension permanently or for a specified period and also right of ordering the recovery from pension under certain circumstances. Para 6 along with provisions are set out herein below:

“6. **Recovery from pension** -(1) The Central Government reserves to itself the right of withholding whether permanently or for a specific period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or State Government by misconduct or negligence during his service, including service rendered on re-employment after retirement.

[Provided that no such order shall be passed without consulting the Union Public Service Commission].

Provided further that -

(a) Such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;

(b) Such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment;

(i) shall not be instituted save with the sanction of the Central Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.”

12. Para (b) also deals with a departmental proceeding which was instituted while the pensioner was in service whether before his retirement or during his re-employment. The entire para 6 deals with the cases where pension has already been sanctioned.

13. Rule 6 of the A.I.S. (Death-cum-Retirement Benefits) Rules, 1958, deals with a

situation where payment of pension was not only started but was being continued. Under this rule pension could be withheld permanently or for a specified period.

14. In the present case, it has been observed that the respondents have claimed that delay in release of the retirement benefits including pension and Gratuity are on account of the criminal case registered against the applicant under Prevention of Corruption Act, 1988 and also for the reason that decision was yet to be arrived at by the respondents regarding initiation of departmental proceedings against the applicant. It is admitted case that at the time of retirement of the applicant, no disciplinary proceedings were pending against him nor chargesheet in criminal case was filed against him. Therefore, no ground was available to the respondents to withhold his retiral benefits including pension and Gratuity. If there had been departmental proceedings initiated against the applicant, the respondents could have provided the provisional pension till the finalisation of the proceedings. In the event, the applicant was found guilty, the

respondents had all the authority to withhold pension permanently or for a specific period or pass an appropriate order directing cut in the pension.

15. Since no disciplinary proceedings were initiated against the applicant, grounds taken by the respondents for not releasing the pension on the date of his retirement are not acceptable. The respondents could not withhold pension, Gratuity or other retirement benefits of the applicant on the ground they were contemplating to initiate disciplinary proceedings against the applicant after his retirement. It is also admitted fact that no chargesheet in criminal case was filed against him.

16. In the facts and circumstances of the case, it can be safely concluded that the applicant was entitled to pension, Gratuity and other retirement benefits on the date of his retirement. Any delay in this regard will entitle him for interest from the respondents. That apart, the amount which he had received at the time of his retirement would have directed interest in the event the same was deposited in

any bank or financial Institution at the relevant time. In the present case, the delay in payment of retiral benefits is evident from the material on record, thus the applicant is entitled to interest from the respondents on the delayed payment.

17. Accordingly, the respondents are directed to pay simple interest @9% per annum on the amount of Gratuity, pension and all other retirement benefits including arrears of pension from the date of his retirement till the date of actual payment. The amount towards interest be paid to the applicant within a period of twelve weeks from the date of receipt of a certified copy of this order.

18. The Original Application is, accordingly, allowed. No order as to costs.

(Smt Ravinder Kaur)
Member (J)

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